IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 385 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

AMBALAL LALJI - Opponent(s)

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Appearance :
MR KC SHAH ADDL PP for Appellant
MS AMEE YAJNIK for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 31/08/2005

ORAL JUDGMENT

1.The appellant State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure challenging the order of acquittal dated

17.10.1992 passed by the learned Judicial Magistrate, First Class, Keshod in Criminal Case No. 31 of 1985 acquitting the accused of the charges of offences under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act' for short) and issued a notice against the concerned Local Health Authority for recovering the compensation amount of Rs.2000-00 and the same was dropped later on. This court has granted leave and admitted the appeal vide order dated 28.12.1993.

2. The case of the appellant in short is that the original complainant Food Inspector visited the shop of the accused running in the name of “Umiya Dudhyalaya” on 13th November, 1984 at Keshod. The complainant called one Shri Harsukhbhai Jadavbhai Patel as panch witness before collecting the sample from the shop of the accused. In the shop, 20 ltrs. cane of milk was laying, wherefrom, the accused was selling milk. The milk was described as separate milk. After introducing himself as a Food Inspector and intending to collect the sample for analysis, the complainant has purchased 700 ml. Of separate milk on payment of Rs.1-05ps and collected the cash memo bearing signature of the accused and panch witness thereon. That cash memo is exhibited at Ex.21 on record. The receipt of money is exhibited at Ex.22.

The sample milk was thereafter divided into three equal parts and collected in cleaned, orderless, dried, transparent glass bottles. The glass bottles were sealed with the help of airtight cape so as to prevent any article or particles or moisture from entering. The requisite preservatives were added before sealing the sample and the bottlers were packed in strict compliance of the Rules. The panchnama of taking sample was drawn. The bottles were taken to the office of the Food Inspector on 14.11.1984. The form No. 7 was filled in and one part of the sample was forwarded to the Public Analyst for analysis at Bhuj and the specimen seal was also sent separately. The receipt for sending the sample through S.T. Parcel is produced at Ex.54. The office copy of the forwarding letter and form are produced at Exs. 25 and 26 and registered AD Slip is produced at Ex.27, remaining two parts of the samples were sent to the Local Health Authority, Junagadh. The office copy of intimation to the Local Health Authority is at Ex.28, receipt received from the Public Analyst, Bhuj is at Ex.29, the details of sample received from the Public Analyst is at Ex.31. The report of the Public Analyst, declaring that the sample food article was not in conformity with the standard laid down under the Rules and other papers were sent to the Local

Health Authority for obtaining permission for lodging prosecution. The Local Health Authority has accorded its sanction, which is produced at Ex.34 and on the basis of that, a complaint was lodged. Local Health Authority was informed about the lodging of complaint and the said letter is produced at Ex.35. The Local Health Authority has issued notice under Section 13 (2) of the Act to the accused, the office copy whereof is at Ex.36. The registered AD Slip intimating that the notice was issued to the accused is at Ex.37. The accused had applied to the trial Court for sending the remaining part of the sample food articles for analysis vide his application dated 2.3.1985 at Ex.84. The Court has allowed the said application vide order dated 7.6.1985. The said order allowing the application was challenged in Revision Application No. 12 of 1985, which was ultimately rejected on 3.6.1986. The central Food Laboratory report is at Ex.16 on the record, which also indicates that the sample food article was not in conformity with the standard of 'skimmed milk' laid down in PFA Rules and the matter had proceeded further. It appears from the record that the panch witness was examined at Ex. 18 and 50. The learned APP before the trial Court moved an application under Ex. 51 under Section 344 of the Code of Criminal Procedure for

appropriate action against the panch as he had not deposed in the correct manner in the court. The court issued notice at Ex. 52 to the panch. The panch witness Harsukhbhai applied for time, which came to be granted and he filed his reply to the notice contending that as he is ignorant of the court proceedings, he may be pardoned, however, he maintained his say that he was not aware of the letter, which he has signed, as the Food Inspector was public servant and therefore, he requested him to sign. The learned trial Court has framed as many as five issues (i) Whether the prosecution proves it beyond doubt that the accused has committed an offence under Section 7 read with Section 16 of the PFA Act, 1954 on his selling separate milk sample to the Food Inspector on 13.11.1984? (ii) As the panch witness Harsukhbhai Jadavjibhai Patel on 17.7.1992 has given testimony, which was far from the truth recorded at Ex.50, can he be proceeded against him under Section 344 of the Code of Criminal Procedure and be punished? (iii) Whether an order could be passed against the complainant for compensation under Section 250 of the Code of Criminal Procedure? (iv) Whether Shri K.M. Patel, Assistant Director, Local Health Authority, Food and Drugs Control, Junagadh is liable to be prosecuted under Section 250 of the Code of

Criminal Procedure? (v) what order? The learned trial Court has answered the issue No. 1 in negative, issue No. 2 in affirmative, issue No. 3 in negative, issue No. 4 in affirmative and issue No. 5 as per his order. The learned trial Court has acquitted the accused of the charges against him on technical reasons. The trial Court imposed fine of Rs.200/- in default thereof, 20 days Simple Imprisonment and detention till rising of the court upon panch witness Harsukhbhai Jadavji Patel. The Court had as stated herein above, issued notice calling upon Shri K.M. Patel, Assistant Director, as to why compensation of Rs.2000/- may not be recovered from him, which came to be dropped later on under order dated 30.11.1993 and the trial Court also sent the intimation and copy of his order to Commissioner of Food and Drugs Control, Gandhinagar for taking appropriate action as per Criminal Manual para 173(2) against Shri K.M.Patel, Assistant Director for issuance consent contrary to the prevailing rules and lacking absolute devotion to duty. This impugned order dated 17.10.1992 is assailed in the present appeal.

3. Mr. K.C. Shah, learned Addl.P.P. has vehemently submitted that the impugned order is bereft of tenable reasoning and ex-facie perverse and therefore, deserves to be quashed and set aside. Shri Shah has submitted

that sample food article was reported to be adulterated and not in conformity with the standard laid down in PFA Rules by the Central Food Laboratory, the certificate issued by the Central Food Laboratory being a conclusive piece of evidence on the aspect of the adulteration, the trial Court ought not to have acquitted the accused present respondent. The reasoning put forward by the trial Court have no support of the provision of law and therefore, the same deserves to be quashed and set aside. The director of Central Food Laboratory has in turn stated that the sample food article was not in conformity with the standard laid down in PFA Rules and therefore, that being a conclusive piece of evidence, the court ought not to have gone beyond that and say that as the standards of 'separate milk' are not prescribed under Rules, the report cannot be believed. Shri Shah has submitted that the standards of schemed milk have rightly been applied by the Central Food Laboratory and therefore, report ought to have been considered to be a conclusive piece of evidence for convicting the accused present respondent. Shri Shah has also submitted that separate milk is a colloquial term employed by the vendor and the Food Inspector, but that itself may not have effect of changing characteristic of sample food article i.e.

'skimmed milk'. The process making of 'skimmed milk' is well known and word 'separate milk' is used to indicate the milk, which actually a 'skimmed milk' and therefore, the trial Court ought not to have considered that the standards of 'separate milk' were not laid down. Shri Shah has also submitted that the judgment of the trial Court is otherwise also erroneous and so perverse and has resulted into total miscarriage of justice. Shri Shah has submitted that the trial Court's judgment, if not reversed then, it would certainly have very adverse effect upon the functioning of public servants like Food Inspector and Local Health Authority and such finding is required to be deprecated by this court. Shri Shah has submitted that the trial Court ought not to have imposed punishment upon the panch witness without following the due procedure of law as it seen from the record, the notice issued to the panch witness, has remained as it is, and without coming to the definite conclusion, which can be arrived only after the conclusion of the trial and after affording full fledged opportunity to the accused, the court has straight way imposed punishment, which is untenable in eye of law. Shri Shah has further submitted that trial Court has also issued a notice to the Local Health Authority Shir K.M.Patel, which was also uncalled for

and ofcourse, which was later on withdrawn, however, the trial Court's sending copy of his order to the Government of Gujarat and observation in respect of Local Health Authority were also uncalled for and may work as serious deterrent on the functioning of Public servants like Local Health Authority and Food Inspector. Shri Shah submits that thus, in view of this perverse finding and approach of the trial Court, impugned judgment deserves to be set aside and appeal deserves to be allowed.

4. Ms. Yagnik, learned counsel appearing for the respondent original accused has submitted that the finding of the trial Court on issue Nos. 2 to 4 cannot be supported, however, she urges that the order of acquittal deserves to be maintained in view of the fact that the accused being a small time vendor and due to passage of time, he deserves to be atleast accorded benefit of doubt, which can well be established independent from the reasoning adopted by the trial Court. Ms. Yagnik has submitted that the order of acquittal could be maintained on the ground that the prosecution has not established its case beyond reasonable doubt so as to bring home the guilt of the accused. She submitted that inordinate delay in obtaining the report from the Central Food Laboratory

can surely not be over looked. She submitted that though accused himself had applied for sending the sample to the Central Food Laboratory after a period of 10 days from the receipt of the notice under Section 13(2) of the Act, however, the same should not have been sent. Once the trial court allowed the application of the said accused, the prosecution instead of abiding the order of sending sample for analysis to the Central Food Laboratory, preferred Criminal Revision Application challenging the order of the court allowing the application of the accused, on account of such attitude, the sending of sample got delayed. Ms. Yagnik submits that testimony of the complainant and material on record would established beyond doubt that the procedure for sending sample was not strictly complied as per the requirement of law. The mandatory provision in the Act for sending the sample is that the Court while sending the sample, has to apply its own seal on the container as well as on the outer cover after recording its satisfaction that original seal of FIB was intact. The court is duty bound to affix the distinguish number and code number on the outer cover of the container itself. The record show that no such exercise of affixing the distinguishing number on the container having been done by the court. The letter of

the Central Food Laboratory also did not indicate that there was total compliance with Rule 4 of the Rules and this ground alone is sufficient to maintain acquittal.

5. This court has perused the record and heard the learned counsel at length. The record show that the court has in fact ascertain the condition of seal before sending it to the Central Food Laboratory as could be seen from the rojkam. However, the very same Rojkam also indicates that the distinguishing number as required under Rule were not affixed on the container, which contained the sample food article. The R&P would further show that the sample food article could not be tested immediately by the Central Food Laboratory as the specimen seal was not received by the Central Food Laboratory and therefore, the Central Food Laboratory has to intimate to the Court about the said situation and the court had to send the specimen seal again to the Central Food Laboratory. In view of this and in view of the correspondence exchanged between the court and the Central Food Laboratory, it can well be said that the prosecution has not proved beyond doubt that there was absolute compliance of Rule 4 of the PFA Rules, 1955. As the prosecution is not able to prove the complete compliance with Rule 4 of the Rules, couple with the fact that food article i.e. milk itself

was examined by the Central Food Laboratory after a period of about 2 years it would be sufficient to support the contention that the order of acquittal need not be disturbed at this stage in the acquittal appeal.

6. This is ofcourse would not amount to rejecting the appeal in its totality. This court is constrained to take serious note of the irregularities and approach of the trial Court in dealing with panch witness, public officer like Food Inspector and Local Health Authority. The order of the trial Court in respect of panch witness is absolutely erroneous, illegal and deserves to be quashed and set aside. The trial court seems to have issued notice to the panch witness on 17.7.1992 under the erroneous exercise of power under Section 344 of the Code of Criminal Procedure, 1973. Section 344 of the Code of Criminal Procedure contains elaborate procedure to be adopted by the trial Court before punishing the witness for giving false evidence. The notice dated 17.7.1992 seems to have been issued on 17.7.1992 at Ex.52 and, the final order in the matter was pronounced on 17.10.1992 i.e. during trial itself, thus before conclusion of trial, wherein, it was alleged that the panch witness has given false evidence. Issuance of notice itself was misconceived, erroneous and illegal as it had not been issued in

strict compliance of provisions of Section 344 of the Code of Criminal Procedure, 1973. The trial Court not only issued notice during the pendency of the trial, but also imposed punishment in the final decision of the trial, which is capable of sending wrong signal to the public servant and citizen. This undue haste made by the trail Court in issuing notice and imposing punishment upon the panch witness, is capable of having negative impact upon the officers working in the Department. The order of trial Court imposing punishment upon the panch witness, therefore, requires to be quashed and set aside and is accordingly quashed and set aside.

7. The trial Court has absolutely misdirected itself in issuing notice to the Local Health Authority Shri K.M. Patel and also making observation in respect of the conduct of the Food Inspector. As it appears from the record that the trial Court issued notice to the Local Health Authority, which is at Ex.81, the notice was issued on 15.12.1992 calling upon the Local Health Authority to explain as to why the compensation of Rs.2000/- may not be recovered from him for according illegal, malafide and wrongful consent at Ex.34 in the proceedings. As per the trial Court's view, on account of such illegal, malafide consent accorded by the Local

Health Authority, the accused had to suffer mental agony and trauma of undergoing criminal trial. The trial Court, therefore issued notice under the patent erroneous belief that the Local Health Authority has accorded consent wrongfully and malafide. This court with great pain observe that, such a belief on the part of trial court evince lack of understanding of the functioning of the statutory authority i.e. Local Health Authority. The trial Court has failed in appreciating the correct functioning of the statutory authority i.e. Local Health Authority under the Scheme and provisions of PFA Act, 1954. It is really unfortunate that the trial Court though was apprised of the functioning of the Local Health Authority under the reply of Local Health Authority, which is at Ex.83, did continue in its belief that the consent was not accorded bonafide and as per rules. The perusal of the reply of the Local Health Authority at Ex.83 would clearly show that the trial Court ought to have appreciated the position of law in respect of the functioning of the Local Health Authority. The judgment of this court in Criminal Appeal No. 841 of 1980 cited by the Local Health Authority in its reply further clarified that the Local Health Authority has performed its duty absolute in accordance with law and it did

not call for any remarks from any quarter. The Apex Court in the judgment reported in case of SURESH H. RAJPUT AND ORS. VS. BHARTIBEN PRAVINBHAI SONI AND ORS. Reported in (1996)7 SCC p.199 has held that sanctioning authority is not required to weigh the pros and cons and the sanction did not call for elaborate reasons. In the instant case, Local Health Authority before according the sanction, seems to have perused the report of the Public Analyst dated 5.12.1984 at Ex.30, which in unequivocal terms mentions that the sample food article was not in conformity with the standard laid down and therefore, it was adulterated. It was not expected of the Local Health Authority to decide culpability of the accused while according sanction.

8. In view of this, this court has no hesitation in observing that the trial Court has transgressed its jurisdiction in awarding punishment to the panch witness and making observation against the Local Health Authority. The observation made against Local Health Authority thus, being erroneous, deserves to be deprecated and quashed and set aside and are accordingly quashed and set aside.

9. It is needless to say that adverse action, if any, initiated against the Local Health Authority on the basis of the judgment of the trial Court dated

17.10.1992 in Criminal Case No. 31 of 1985,then the same should be revoked forthwith. Copy of this order may be sent to the Secretary, Health and Family Welfare Department, so that the action, if any, taken against the Local Health Authority, may immediately be revoked.

10. In the result, the order of acquittal dated 17.10.1992 passed in Criminal Case No. 31 of 1985 is sustained. However the finding of the learned Judicial Magistrate in respect of the panch witness, Food Inspector and Local Health Authority are hereby reversed and quashed and set aside and to that extent the appeal is partly allowed. Accordingly, the appeal stand partly allowed to the aforesaid extent only.

(S.R.BRAHMBHATT, J.)

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